

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAMELA MATTISON,
o.b.o. M.M. and M.M.,

Plaintiff,

Hon. Richard Alan Enslin

v.

Case No. 4:05-CV-79

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

REPORT AND RECOMMENDATION

This is an action pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), to review a final decision of the Commissioner of Social Security denying Plaintiff's claim that her children are entitled to survivor's benefits under the Social Security Act.

Pursuant to 28 U.S.C. § 636(b)(1)(B), authorizing United States Magistrate Judges to submit proposed findings of fact and recommendations for disposition of social security appeals, the undersigned recommends that the parties' Stipulation and Order Certifying Question of Law to the Michigan Supreme Court, (dkt. #12), be **granted and, furthermore, that this matter be administratively closed pending resolution of such by the Michigan Supreme Court.**

As detailed in the parties' joint stipulation, Plaintiff asserts that her children are entitled to receive survivor's benefits under the Social Security Act as a result of the unfortunate death of their father. The Commissioner of Social Security denied Plaintiff's claims, but as both parties recognize proper resolution of Plaintiff's claims turns on a question of Michigan intestacy

law which the Michigan Supreme Court has not resolved. Accordingly, the parties have stipulated and agreed to certify the relevant question to the Michigan Supreme Court for resolution.

The Court has reviewed the proposed stipulation and finds that the parties have correctly articulated the provisions of federal law governing Plaintiff's claim. Moreover, the Court agrees that the legal question to be certified to the Michigan Supreme Court "is determinative of this action." Finally, the Court finds that the proposed stipulation complies with Michigan Court Rule 7.305 addressing the certification of such matters to the Michigan Supreme Court.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that the parties' Stipulation and Order Certifying Question of Law to the Michigan Supreme Court, (dkt. #12), be **granted**. The Court further recommends that this matter be **administratively closed pending resolution of the relevant question by the Michigan Supreme Court**.

OBJECTIONS to this report and recommendation must be filed with the Clerk of Court within ten (10) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Date: April 2, 2007

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge